

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION NO 8107 OF 1998

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

1. Whether Reporters of Local Papers may be allowed to see the Order ?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the Order ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HEMLATA T KHODA

VERSUS

STATE OF GUJARAT & ORS.

Appearance:

MR MD RANA for the Petitioner
MR HH PATEL for the Respondent

CORAM : MR JUSTICE S.K. KESHOTE

Date of Order : 24/08/1999

C A V JUDGMENT

#. Heard learned counsel for the parties.

#. The petitioner an ex-Staff Nurse of the Medical Department, Government of Gujarat, by this petition under Article 226 of the Constitution of India praying for quashing and setting aside the action of the authority in not granting her retiral benefits. She prayed for the direction to the respondents to release her all retiral benefits along with the interest @18% p.a.

#. The facts of the case in brief are that the petitioner was appointed as Staff Nurse on 16/2/1974. She applied for voluntary retirement w.e.f. 15/6/1995 and that has not been accepted on the ground that complaint is pending against her. She again tendered notice on 18/1/1996 seeking voluntary retirement w.e.f. 17/4/1996. It is the case of the petitioner that this notice was not replied. She continued to work upto 20/7/96 and thereafter she stopped attending to duty as she considered that the aforesaid notice of voluntary retirement would have been accepted by the employer.

#. From the reply of this Special Civil Application to which the rejoinder has not been filed, I find that the petitioner has remained absent for long period from her duty. This Court has ordered on 17/2/1999 to consider the application made by the petitioner dated 17/2/1998 and decide the same in accordance with law. The decision taken on that application is placed on the record to this case along with the counter affidavit. This order has been complied with and the application of the petitioner aforesaid was came to be decided under the order dated 15/3/1999. From this order, I find that the petitioner remained absent for the period as under :

13/10/93 to 10/01/94 90 days
11/01/94 to 10/04/94 90 days
11/04/94 to 06/05/94 26 days
07/05/94 to 06/09/94 123 days
07/09/94 to 06/12/94 91 days
07/12/94 to 06/03/95 90 days
07/03/95 to 13/03/95 7 days
27/03/95 to 15/05/95 51 days
15/05/95 to 15/01/96 244 days
12/02/96 to 21/02/96 10 days

822 days

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The total absence of the petitioner is of 822 days and under the order dated 15/3/99 it has been held that it is unauthorized absence of the petitioner. This period of the unauthorized absence of the petitioner cannot be taken to be a period spent on duty. It cannot be taken for qualifying services of the petitioner both for eligibility for voluntary retirement and for the pension etc. From this long absence it seems to be a clear case where the petitioner would have gone abroad or would have gone elsewhere. In the Special Civil Application, the petitioner has not furnished any cause what to say a sufficient, just and bona fide cause for her this long absence from duty. The petitioner was in essential services and to remain unauthorisedly absent from the duty is a very serious but the officers of the department are either not aware of the Gujarat Civil Services (Discipline & Appeal) Rules, 1971 or they are liberal in these matters. These are the matters where expeditiously disciplinary action has to be taken against the defaulting officer/employee.

#. Now I may deal with the draft amendment, which has been proposed by the petitioner in the Special Civil Application. By this draft amendment, the petitioner praying for quashing and setting aside of the order dated 15/03/99. After going through this draft amendment, I do not find any ground on the basis of which this order is said to be illegal or on which it can be quashed and set aside. After this unauthorized long absence of the petitioner otherwise also she could not have been granted any voluntary retirement. The day on which she submitted the application for voluntary retirement, she may be on duty but if we go by the facts of this case, she remained absent again from duty from 12/2/1996 to 21/2/1996. Thereafter, she came to join the duty but this conduct of the petitioner exposes herself to the disciplinary proceedings. The respondents have not committed any illegality in not granting her application for voluntary retirement. The second application filed by the petitioner is also of little help to her as she has continued to attend duty till 20/7/96 after alleged notice period. Thereafter from 21/2/96 the petitioner is again absent from her duty.

#. Taking into consideration the totality of the facts of the case the petitioner does not fulfil the eligibility for voluntary retirement. Secondly as she remained absent from her duty unauthorisedly for which disciplinary proceedings could have been taken. The respondents have correctly declined to permit her to go

on voluntary retirement for first time as well as second time also, as per her own conduct her application has been taken to have not been pressed.

In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. The respondents are at liberty to take appropriate disciplinary action against the petitioner for this grave misconduct and they may punish the petitioner on proof of the same accordingly. Rule discharged. The petitioner is directed to pay the costs of this petition to the respondents.

(S.K.Keshote, J.)

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